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No. 29

In the Supreme Court of the United States

OCTOBER TERM, 1961

KERR STEAMSHIP CO., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA AND FEDERAL MARITIME BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENTS

ARCHIBALD COX,
Solicitor General,
Department of Justice, Washington 25, D.C.

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Assistant General Counsel,
Federal Maritime Commission,
Washington 25, D.C.

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SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENTS

Petitioners seek review of a judgment of the Court of Appeals for the Second Circuit which affirmed an order of the Federal Maritime Board requiring every common carrier by water subject to the Shipping Act, 1916 to file with the Board copies of certain agreements. In our memorandum filed on February 1, 1961, we noted that the same order was also under review before the Court of Appeals for the District of Columbia Circuit in *Montship Lines, Limited, et al.* v. *Federal Maritime Board and United States* (No. 15,783 *et al.*); and we suggested that, although we believed the decision below in the present case to be correct and further review to be unwarranted, the

Court should defer action on the petition pending the disposition of the *Montship* cases. By memorandum dated February 3, 1961, the petitioners concurred in the suggestion of deferral.

On June 30, 1961, the Court of Appeals for the District of Columbia Circuit decided the *Montship* case. The opinion, which has not yet been reported, is set forth in the Appendix, *infra,* pp. 5–21. The court there rejected various challenges to the Board's statutory authority to issue the order. It held, however, that since the order did not state the purpose for which the information demanded by the Board was sought, it was impossible to determine whether the material sought was relevant to the Board's inquiry. Ruling that the order was therefore "fatally defective," the court vacated it and remanded the case to the Board for further proceedings not inconsistent with the opinion (*infra,* pp. 17–18).

The government does not intend to seek review of that decision. The Federal Maritime Commission, which on August 12, 1961, succeeded to the regulatory powers and duties of the Federal Maritime Board (Reorganization Plan No. 7 of 1961, H. Doc. 187, 87th Cong., 1st Sess.) is now considering what action it should take to correct the deficiency in the order to which the court of appeals pointed in the *Montship* case. The Commission is expected to decide the matter in the near future. Any new order that the Commission may issue will probably apply to the petitioners

in the instant case, and may well affect the issues raised by the petition, particularly those relating to the alleged vagueness and unreasonableness of the order (see Pet., pp. 3–4).

In these circumstances, we suggest that it would be appropriate for this Court further to defer action upon the instant petition, until the Commission has decided what action it will take upon the remand in the *Montship* case. Such a further deferral cannot injure or prejudice the petitioners, since the duty of compliance with the Board's order has been stayed pending the disposition of the instant petition.

We shall, of course, promptly advise the Court as to the action of the Commission upon the remand from the Court of Appeals for the District of Columbia Circuit, and state our views as to the proper disposition of the petition in the light of the Commission's action.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

ROBERT E. MITCHELL,
Assistant General Counsel,
Federal Maritime Commission.

SEPTEMBER 1961.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 15783–809, 15814, 15838, 15857, 15860, 15879–80, 15901–02, 15904, 15911, 15917, 15920–22, 15938, 15947, 15982–83

MONTSHIP LINES, LIMITED, ET AL., PETITIONERS

v.

FEDERAL MARITIME BOARD and THE UNITED STATES OF AMERICA, RESPONDENTS

ON PETITIONS TO REVIEW AN ORDER OF THE FEDERAL MARITIME BOARD

Decided June 30, 1961

Before PRETTYMAN, BAZELON and WASHINGTON, Circuit Judges.

BAZELON, *Circuit Judge:* Pursuant to the Judicial Review Act of 1950, 5 U.S.C. §§ 1031–1042 (1958), one hundred and eighty-three alien corporations engaged in the common carriage of cargo and passengers by water between the United States and foreign countries[1] bring these petitions to review an order of the Federal Maritime Board entered April 11, 1960, under

[1] In addition there are five petitioners which are domestic corporations and two petitioners which contend that as of the date of the Board's order they were not engaged in the common carriage of cargo or passengers between the United States and foreign countries.

§ 21 of the Shipping act of 1916.[2] This order requires every common carrier by water subject to the Act to file "a list identifying every contract, agreement or understanding, involving the water-borne commerce of the United States," which was in effect as of January 1, 1960, between the carrier and "any other common carrier by water * * * or with any freight forwarder, terminal operator, stevedore, or ship's agent * * * which related or pertained to" seven specified subjects.[3] In addition, each carrier was required to file with the Board copies of every such agreement not previously filed. The carriers were required to certify under oath that the documents

[2] Section 21, 46 U.S.C. § 820 (1958), provides:

"The Federal Maritime Board and the Secretary of Commerce may require any common carrier by water, or other person subject to this chapter, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it or him any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this chapter. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Board or Secretary so requires, and shall be furnished in the form and within the time prescribed by the Board or Secretary. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of $100 for each day of such default.

"Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than $1,000, or imprisonment for not more than one year, or to both such fine and imprisonment."

[3] For the full text of the Board's order, see Appendix.

submitted were true and complete records of the agreements called for.

The petitioners filed motions for reconsideration of the Board's order. In each instance the Board denied these motions on the merits without hearing. The orders denying these motions are also before us on review.

Petitioners and respondents join issue on a number of matters. We shall deal first with those questions pertaining to our jurisdiction to review the Board's § 21 order. Then we shall consider the general issues affecting all petitioners. Finally we shall turn to the special issues which are raised by and which affect only certain of the petitioners.

I. JURISDICTION

A. Effect of 28 U.S.C. § 2112

On June 8, 1960, the first of the instant petitions to review the Board's § 21 order were filed in this court. On the same date a similar petition was filed by States Marine Lines in the United States Court of Appeals for the Second Circuit. Two days later another petition was filed in the Second Circuit by Kerr S.S. Co.

A certified index of the record was filed in this court on October 3, 1960. This is equivalent to filing of the record itself, under 28 U.S.C. § 2112(a). We are advised that neither the record nor any index of the record was at any time filed in the Second Circuit. On October 31, 1960, the Second Circuit upheld the Board's order and denied Kerr's petition. *Kerr S.S. Co.* v. *United States,* 284 F. 2d 61. The question initially presented is whether in light of the applicable statutory provisions the Second Circuit's action precludes our review.

Section 1036 of Title 5, U.S.C. (1958), provides in part:

> * * * the agency shall file in the office of the clerk of the court of appeals in which the proceeding is pending the record on review, as provided in section 2112 of Title 28.

Section 2112(a) of Title 28 provides in part:

> * * * If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency * * * concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

It is clear, in light of these statutory provisions that we have jurisdiction. The mere fact that petitions for review of the same order were filed in the Second Circuit and that that court has already upheld the order does not oust this court of jurisdiction. The question whether the Second Circuit had jurisdiction to decide *Kerr* in light of 28 U.S.C. § 2112(a) and 5 U.S.C. § 1039(a) (1958)[4] is not before us.

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[4] This section provides:

"Upon the filing and service of a petition to review, the court of appeals shall have jurisdiction of the proceeding. The court of appeals in which the record on review is filed, on such filing, shall have jurisdiction to vacate stay orders or interlocutory injunctions theretofore granted by any court, and shall have exclusive jurisdiction to make and enter, upon the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the orders of the agency."

B. Timeliness of Certain Petitions to Review

Section 4 of the Review Act, 5 U.S.C. § 1034 (1958), provides in part:

> Any party aggrieved by a final order reviewable under this chapter may, within sixty days after entry of such order, file in the court of appeals * * * a petition to review such order.

Eleven of the petitioners[5] sought judicial review of the order of April 11 more than sixty days after the order was served, but within sixty days after the Board acted upon their motions for reconsideration of that order. The Maritime Board asserts that these petitions to review are untimely and seeks their dismissal. We think it clear, however, that the petitions in question were timely filed under our decision in *Outland* v. *Civil Aeronautics Board*, —— U.S.App. D.C. ——, 284 F. 2d 224 (1960), where we held that the statutory sixty-day period for seeking judicial review of Civil Aeronautics Board orders did not commence until the Board acted upon Outland's motion for rehearing.[6]

The Maritime Board urges, however that *Outland* is inapplicable since none of the motions for reconsideration we discuss were filed with the Board within the thirty-day period provided by Rule 16 of its Rules of Practice and Procedure. But we agree with peti-

[5] Compania Anonima Venezolana de Navegacion; Pacific Shipowners, Ltd.; Orient Mid-East Lines, Inc.; Jugoslavenska Linijska Plovidba; Splosna Plovba; Navigazione Alto Italia, S.p.A.; Societa Italiana di Armemento "Sidarma"; Black Star Lines, Ltd., Compania Colombiana de Navegazion Maritima, Ltd.; Compania Maritima Orlanda, S.A.; Marina Mercante Nicaraguense, S.A.

[6] The controlling statute in the *Outland* case, 49 U.S.C. § 1486(a) (1958), provides that "any order * * * issued by the Board * * * shall be subject to review * * * upon petition, filed within sixty days after the entry of such order. * * *

tioners that the Board's consideration of these motions on their merits constituted a waiver of the Board's own limitation period. Cf. *Bowman* v. *Loperena*, 311 U.S. 262 (1940); *City of Pittsburgh* v. *Federal Power Comm'n*, 99 U.S. App. D.C. 113, 237 F. 2d 741 (1956). Although a court's or agency's consideration of an untimely motion for rehearing or reconsideration may not constitute a waiver of a limitation period fixed by Congress,[7] we think the rule is otherwise when the limitation period is imposed by the agency.

C. Intervention

Section 8 of the Review Act, 5 U.S.C. § 1038 (1958), provides in part:

> * * * any party or parties in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review such order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the agency's order, may intervene in any proceeding to review such order.

A number of the carriers subject to the Board's order filed notices of intention to intervene[8] or motions for leave to intervene in the instant review proceedings. Most of them also filed petitions to review which we hold above to be timely.[9] But four of the carriers

[7] Cf. *Safeway Stores* v. *Coe*, 78 U.S. App. D.C. 19, 136 F. 2d 771 (1943).

[8] For our present purposes, we treat the notices of intention to intervene as motions for leave to intervene.

[9] We dismiss as moot the motions for leave to intervene filed by carriers which also filed petitions to review held timely herein.

seeking intervention did not file petitions to review."[10]

Assuming *arguendo* that these four are not "parties in interest in the proceeding before the agency" as is required for intervention as a matter of right, it is clear that they are parties "whose interests are affected by the agency's order" and we have discretion under the statute to permit intervention. Allowing these carriers to intervene would not in any appreciable way further complicate this litigation. The Board has not shown that it will be prejudiced by intervention, and the questions raised by the intervenors are identical to those raised in the cases in which intervention is sought. The motions for leave to intervene will, therefore, be granted.

II. GENERAL ISSUES

A. Authority under Section 21

Petitioners advance three contentions as to why the instant order falls outside the authority conferred on the Board by § 21 of the Shipping Act. They argue: (1) § 21 does not cover "contracts, agreements, and understandings"; (2) § 21 is limited to obtaining information relevant to the Board's "regulatory" power over carriers' rates under §§ 17 and 18; and (3) § 21 does not authorize the Board to compel the production of documents located outside the territorial confines of the United States.

Petitioners' first contention is properly answered in *Kerr:* namely, that, although § 21 does not expressly speak of "contracts, agreements or understandings" it is clear that such papers are encompassed within the broad language of the section which requires carriers and other persons subject to the Act to file "any ac-

[10] Americana Shipping Corp.; Kvarnerska Plovidba; Wegal A.B. (Totem Line); Skibsaktieselskapet Solstad.

count, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this chapter." Mutual dealings between parties culminating in consensual arrangements are clearly "transactions." And the writings evidencing the arrangements arrived at are just as clearly "memoranda." Therefore, the instant order falls within the scope of § 21.

Petitioners present an elaborate argument based upon the legislative history of § 21. They contend that section is modeled upon § 20 of the Interstate Commerce Act, 34 Stat. 594 (1906), and that a year before the enactment of the Shipping Act the Supreme Court in *United States* v. *Louisville & N. R.R.*, 236 U.S. 318 (1915), limited the similar language of § 20 to cover only accounting and bookkeeping records. Assuming *arguendo* that petitioners' claims are correct, there is good reason why they should not be followed and why § 21 should not be given a similarly restrictive meaning. In *Louisville* the Interstate Commerce Commission had attempted to inspect the railroad's correspondence under § 20. Had the Supreme Court upheld the Commission's authorization to do so under § 20, it would have been forced to resolve the question whether such inspection constituted an unreasonable search and seizure. Under the Court's then view of the Fourth Amendment's limitation on the compusory production of corporate records and documents—a view no longer followed, compare *Federal Trade Commission* v. *American Tobacco Co.*, 264 U.S. 298 (1924), with *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186 (1946); and *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950)—the Court would probably have had to answer that question in the affirmative. Be-

cause the prevailing views on the constitutional question led to a restrictive reading of § 20 of the Interstate Commerce Act in 1915 does not seem to us to justify a similarly restrictive reading of § 21 of the Shipping Act today when these views are no longer followed.

In addition it should be noted that in *Louisville* the Supreme Court defined "records" as used in § 20 of the Interstate Commerce Act to include "the written evidence of [a corporation's] * * * contracts and business transactions."[11] Section 21 of the Shipping Act also speaks of "records," and consequently the *Louisville* case may be read as supporting the Board's authority under that section.

Petitioners' second contention is that § 21 is limited to enabling the Board to obtain information relevant to carrying out its supervisory power over carriers' rates under §§ 17 and 18 and is therefore inapplicable where the Board is seeking information to determine whether the prohibitions of §§ 14–16 are being complied with. We find no basis in the Shipping Act for this bifurcation of the Board's authority. Furthermore, petitioners' claim would appear to be laid at rest by the Supreme Court's description of § 21 in *Isbrandtsen-Moller Co.* v. *United States*, 300 U.S. 139, 144–45 (1937):

> The purpose of § 21 is not far to seek. Other sections forbid allowance of rebates, require the filing of agreements fixing or regulating rates, granting special rates, accommodations or privileges, which may be disapproved, cancelled or modified if the board finds them unjustly discriminatory or violative of the act, prohibit undue or unreasonable preferences or the cutting of established rates and unjust discrimination between shippers or ports. To en-

[11] 236 U.S. at 334.

> able it to perform its functions the board may well need such information as that which the section gives it power to demand.

This quotation refers to the Board's responsibilities under §§ 14–16 as well as §§ 17 and 18. It is apparent that § 21 is not to be restricted to what petitioners characterize as the "regulatory" as opposed to the "enforcement" sections of the Act.

Petitioners finally contend that, since § 21 does not expressly authorize the Board to require the production of records or memoranda located outside the territorial confines of the United States, that power ought not to be implied. In support of this argument, they point to § 27 of the Shipping Act, 46 U.S.C. § 826 (1958), under which the Board "for the purpose of investigating alleged violations" may subpoena witnesses or documents "from any place in the United States at any designated place of hearing." Petitioners contend this restriction should be read into § 21. We think not.

It is questionable whether the Board is in fact powerless under § 27 to subpoena documents outside the territorial confines of the United States. Cf. *Securities & Exchange Comm'n* v. *Minas De Artemisa, S.A.*, 150 F. 2d 215 (9th Cir. 1945), in which a similar description of the Security and Exchange Commission's subpoena power under § 22(b) of the Securities Act of 1933 was held not to preclude the Commission from compelling persons within the United States to produce documents of foreign corporations situated outside this country.

In any event, in light of the coverage and the purposes of the Shipping Act, we can see no reason to restrict § 21 to cover only information within the United States. In enacting the Shipping Act, which deals with foreign as well as interstate commerce,

Congress was clearly mindful of the fact that foreign flag as well as United States carriers were subject to regulation thereunder. See H.R. Rep. No. 659, 64th Cong., 1st Sess. (1916). If the Board's investigatory powers were limited to the territorial confines of the United States, regulation of foreign flag carriers would be hampered to a substantial degree. Consequently, we will not read into § 21 a territorial limitation which appears to be contrary to the purposes of the Shipping Act.

We must reject petitioners' contentions regarding protests of foreign governments and extra-territorial enforcement of the Board's order. As the Second Circuit pointed out in *Kerr*, the protests of foreign governments are matters for consideration by the Executive and not the courts. And the question as to whether the order can be enforced by extra-territorial means is not presently before us. All that is here involved is whether the order was properly and validly issued.

B. Notice of Proposed Issuance of a Section 21 Order

Petitioners next contend that because the § 21 order is industry-wide in application it is analogous to rule-making and the Board was required to give notice of the proposed issuance of the order to interested parties so they could submit their views and arguments. Clearly the order is not legislative in character. In any event, notice and hearing are not prerequisite to the issuance of such an order directed to a single carrier. *Isbrandtsen-Moller Co.* v. *United States, supra.* That the Board chose in this instance as a matter of convenience to issue one order directed to many carriers rather than to issue many orders each directed to a single carrier does not convert the instant order into the promulgation of a rule.

C. The Fourth Amendment

The Board's order does not state the purpose for which the information is demanded. For this reason, among others, petitioners contend that the order violates the Fourth Amendment.[12]

Although earlier limitations on the investigatory powers of administrative agencies have been relaxed in recent years,[13] the Supreme Court has informed us that "a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power. * * * But it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. 'The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable.' *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 208." *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652–53 (1950).

What is "reasonably relevant" depends on the purpose and nature of the investigation undertaken by the agency. "[R]elevancy and adequacy or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry." *Oklahoma Press Pub. Co.* v. *Walling*, 327

[12] Although this matter was argued in the briefs in the *Kerr* case, the Second Circuit's opinion does not appear to resolve this issue. We note that the court's opinion does not appear to state the purpose of the Board's order:

> "It does not appear that any of the petitioners tried to show what was the financial burden of listing and copying the contracts in question, or that it was out of all reasonable proportion to *any purpose that the proposed investigation might have*." 284 F. 2d at 64, emphasis supplied.

[13] See *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186 (1946).

U.S. 186, 209 (1946). And as Professor Davis has pointed out, "the breadth of a subpena or of a search made in records may be excessive, but the test is relevance to the specific purpose, and the purpose is determined by the investigators." 1 DAVIS, ADMINISTRATIVE LAW TREATISE § 3.06 (1958). Consequently, the Board's failure in the instant case to state its purpose in requiring the information demanded precluded a determination of relevancy.

Respondents, relying on *Morton Salt,* contend that no detailed specification of purpose is necessary when an agency is investigating "merely on suspicion that the law is being violated, or even because it wants assurance that it is not." [14] If this order is pursuant to such an investigation, a matter which the Board contends in its brief but which does not appear from the face of the order, it might be argued that a *detailed* specification at this stage of "initial inquiry" may not be feasibly required. Whatever may be the validity of that argument, we think it cannot excuse the absence of any indication whatsoever, as in the instant order, of the investigation's purpose since no basis is thereby afforded for determining the relevancy of the information demanded. And just as the reasons underlying agency action must appear from the agency's order, so too we think that the statement of purpose must be apparent from the order itself and cannot be supplied by contentions in the briefs.

In any event, the language in *Morton Salt* upon which the Government relies was not directed to the matter of purpose and relevancy, but rather to the issue of whether the Federal Trade Commission had power to compel reports absent "probable cause" to believe that the law was being violated.

[14] 338 U.S. at 642–43.

The Government also points to *Isbrandtsen-Moller Co.* v. *United States, supra;* and *Bowles* v. *Northwest Poultry & Dairy Products Co.*, 153 F. 2d 32 (9th Cir. 1946), for the proposition that statements of purpose are unnecessary. In *Isbrandtsen-Moller* which, like the insant case, involved an investigatory order pursuant to § 21 of the Shipping Act, the order recited:

> It appearing, That full and complete information as to the rates and charges for or in connection with the transportation of certain property from continental United States to points in foreign countries by carriers by water in foreign commerce subject to the Shipping Act, 1916, is necessary to the proper administration of the regulatory provisions of said act. * * *[15]

This order, stating the subject of the investigation to be rates and charges, provided a standard for determining the relevancy of the documents demanded. Similarly, the order involved in *Northwest Poultry* contained a sufficient statement of purpose and relevancy since the records there required were needed in order to determine whether the corporation had complied with a particular Regional Price Order under the Emergency Price Control Act.

Since the reasonableness of the order under review is dependent upon the relevancy of the information demanded, and that cannot be determined in the absence of a statement of purpose, the order is fatally defective. Because petitioners' contentions regarding the breadth and the vagueness of the order are in part dependent upon the question of relevancy, we find it unnecessary to presently deal with them. The order under review is vacated and the case remanded to the

[15] *Isbrandtsen-Moller Co.* v. *United States*, 14 F. Supp. 407, 408 (S.D.N.Y. 1936).

Board for proceedings not inconsistent with this opinion.

III. SPECIAL ISSUES

A. Local Foreign Law Prohibiting Disclosure

Several petitioners,[16] foreign steamship lines of Yugoslavia and Netherlands nationality assert that the production by them of documents required by the Board's § 21 order would be violative of their local national law. They point to provisions of the Yugoslav Criminal Code and the Netherlands Economic Competition Law which they contend preclude compliance with the Board's order.

Prior to determining whether these foreign laws do in fact forbid the production of documents such as those required by the Board's order and, if so, what effect this should have upon compliance, the appropriate procedure is to require these petitioners to make a good faith attempt to obtain a waiver of such restrictions from their respective governments. *United States* v. *Standard Oil Co.* (*N.J.*), 23 F.R.D 1 (S.D.N.Y. 1958); *Societe Internationale, etc.* v. *McGranery,* 111 F. Supp. 435 (D.D.C. 1953), *affirmed sub nom. Societe Internationale, etc.* v. *Brownell,* 96 U.S. App. D.C. 232, 225 F. 2d 532 (1955), *cert. denied,* 350 U.S. 937 (1956); *Societe Internationale, etc* v. *Brownell,* 100 U.S. App. D.C. 148, 243 F. 2d 254 (1957), *reversed and remanded sub nom. Societe Internationale, etc.* v. *Rogers,* 357 U.S. 197 (1958).

[16] Koninklijke Nederlandsche Stoomboot Maatschappij, N.V.; N.V. Stoomvaart Maatschappij "Nederland"; Koninklijke Rotterdamsche Lloyd, N.V.; N.V. Nederlandsch-Amerikaansche Stoomvart Maatschappij ("Holland Amerika Lijn"); Nederlandsche Stoomvart Maatschappij "Oceaan," N.V.; Oranje Lijn (Maatschappij Zeetransport), N.V.; Jugoslavenska Linijska Plovidba; Splosna Plovba; Karenska Plovidba.

Consequently, these petitioners should upon the remand bring any arguments that their local law prohibits compliance before the Board so that it can then initially determine whether petitioners have made a good faith effort to secure waivers and, if so, whether compliance is to be required.

B. Jurisdiction Over Certain Petitioners

Two of the petitioners [17] contend that they are not subject to the order since on the date of that order neither of them was a common carrier by water engaged in the foreign commerce of the United States. One petitioner contends that it terminated all service with the United States in November 1959, while the other contends it terminated service in February 1960.

Assuming *arguendo* that these petitioners would not be subject to the Board's order if they had permanently terminated their service to or from the United States before April 11, 1960, this court has nothing before it to show such termination other than declarations of petitioners in their briefs. This clearly seems to be a matter upon which evidence should be taken to determine the nature and extent of the cessation of these petitioners' activities. Consequently, on remand these petitioners should bring their contentions before the Board so it can have the opportunity to pass upon this issue in the light of an adequate factual record which can be then made.

We consider it unnecessary to consider the other contentions raised by the petitioners at this time.

Order Vacated.

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[17] Prince Line Ltd.; Compania Espanola de Navegacion Maritima, S.A.

Federal Maritime Board Order, April 11, 1960

"Section 21 Order—Contracts, Agreements and Understandings of Common Carriers by Water."

By virtue of the authority vested in it by section 21 of the Shipping Act, 1916 (46 U.S.C. 820), the Federal Maritime Board hereby orders every common carrier by water subject to said Act, including but without limitation, those named in Appendix A attached hereto and made part hereof, to file with it on or before July 15, 1960, the following:

1. A list identifying every contract, agreement or understanding, involving the water-borne commerce of the United States, which it has entered into with any other common carrier by water and/or common carriers by water, and/or with any freight forwarder, terminal operator, stevedore, or ship's agent which was in effect as of January 1, 1960, which relates or pertains to:

(a) the fixing or regulating of rates, fares, charges or practices for the loading, unloading, handling, transporting, storing, or delivering of property or passengers;

(b) the giving or receiving of special rates, fares, accommodations, or other special privileges or advantages;

(c) the controlling, regulating, preventing or destroying of competition;

(d) the pooling or apportioning of earnings, losses or traffic or the joint use of equipment or facilities;

(e) the allotting of ports or the restricting or otherwise regulating of the number and character of sailings between ports;

(f) the limiting of, or regulating of, in any way, the volume or character of freight or passenger traffic to be carried or to be received, handled, stored or delivered;

(g) the providing for, in any manner, of an exclusive, preferential, or cooperative working arrangement.

Documents filed for approval under section 15 of said Act (46 U.S.C. 814) may be identified by citation of the Federal Maritime Board number assigned thereto, and documents filed in the past year in response to another order issued pursuant to said section 21 may be identified by stating the dates of such order and response; as to others, specify the effective date and the parties.

2. A copy of every contract, agreement, or understanding identified on said list, which has not been filed for approval under said section 15, and has not been filed with the Board in the past year in response to an order issued pursuant to said section 21. If any such contract, agreement, or understanding is oral, it shall be set forth in a memorandum in sufficient detail to represent a true and complete record of the contract, agreement, or understanding.

3. A statement, under oath, by a duly authorized officer of the carrier, that the records submitted in response to items 1 and 2 above are true and complete records of all contracts, agreements and understandings of the character or nature required to be filed by this Order, to which such carrier was a party as of January 1, 1960.

By the Federal Maritime Board.

Date: April 11, 1960

JAMES L. PIMPER,
Secretary.

U.S. GOVERNMENT PRINTING OFFICE: 1960